

# FREEDOM OF INFORMATION LAW “FOIL” COMPLIANCE

## I. Law

- A. Public Officers Law §§84 to 90
- B. Erie County Local Law No. 8-1978

## II. FOIL Officers: Each Department of the County shall appoint a FOIL Officer in charge of responding to FOIL requests, and notify the County Attorney’s Office of the name and phone number of the FOIL Officer.

## III. Definition of “Record” (or “Document”)

“Record” means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

## IV. Responding to FOIL requests:

- A. Five-day response. Within five business days of the receipt of a written FOIL request, the FOIL Officer shall:
  - 1. make such record available to the person requesting it;
  - 2. deny such request in writing; or
  - 3. furnish a written acknowledgement of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.
- B. “Date Certain” for receiving documents. If circumstances prevent disclosure of requested documents within twenty business days from the date of acknowledgement of the receipt of the request, the department shall state, in writing:
  - 1. the reason for the inability to grant the request within twenty business days; and
  - 2. a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.
- C. Charge for copies. Before releasing the documents, the FOIL officer shall charge the person making the request twenty-five cents for each copy that measures 9’x14’ or less, or the actual cost of producing any other record.

## V. Documents specifically EXEMPTED from disclosure:

- A. Documents specifically exempted from disclosure by State or Federal statute;
- B. Disclosure would constitute an unwarranted invasion of personal privacy, which includes:
  - 1. Employment, medical or credit histories of employees.
  - 2. Disclosure of medical or personal records of a client or patient in a medical facility (prohibited by HIPPA);
  - 3. Sale of names and addresses to commercial or fund-raising entities;
  - 4. Disclosure would result in personal or economic hardship to a party and such information is not relevant to the work of the agency requesting or maintaining it;

5. Disclosure of information of a personal nature reported in confidence to an agency but not relevant to the ordinary work of the agency;
  6. Information of a personal nature contained in a workers compensation record;
- C. Disclosure would impair present or imminent contract awards or collective bargaining negotiations;
- D. Trade secrets or information which if disclosed would cause substantial injury to the competitive position of a commercial enterprise;
- E. Documents compiled for law enforcement purposes and which, if disclosed, would:
1. Interfere with law enforcement investigations or judicial proceedings;
  2. Deprive a person of a right to a fair trial or impartial adjudication;
  3. Identify a confidential source or disclose confidential information relating to a criminal investigation; or
  4. Reveal criminal investigative techniques or procedures, except routine techniques and procedures;
- F. Disclosure could endanger the life or safety of any person;
- G. Inter-agency or intra-agency materials which are NOT:
1. Statistical or factual tabulations or data;
  2. Instructions to staff that affect the public;
  3. Final agency policy or determinations;
  4. External audits, including but not limited to audits performed by the comptroller and the federal government; or
- H. Examination questions or answers which are requested prior to the final administration of such questions;
- I. Disclosure would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; or
- J. Photographs, microphotographs, videotape or other recorded images prepared under authority of §1111-a of the Vehicle and Traffic Law.
- K. Documents that do not exist in your department.

## VI. Appeal

- A. Any person denied access to a record may, within thirty days after receiving notice of the denial, appeal such denial in writing to the FOIL Appeals Officer. The Deputy County Executive is the FOIL Appeals Officer for all departments falling under the jurisdiction of the County Executive. With regard to the Comptroller's Office, County Clerk's Office, District Attorney's Office and Sheriff's Department, the Appeals Officer shall either be the head of the agency or a person designated by the FOIL Appeals Officer.
- B. A copy of the appeal should be immediately sent by the FOIL Appeals Officer to the County Attorney's Office.
- C. The FOIL Appeals Officer shall, within ten business days of the department's receipt of the appeal, fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. A copy of same shall be forwarded to the County Attorney's Office.

- D. The County Attorney's Office will immediately forward to New York State Committee On Open Government a copy of such appeal when it is received, as well as the ensuing determination thereon.
- VII. Subject Matter List: Each department shall maintain a reasonably detailed current list by subject matter, of all records in the possession of the department, whether or not such records are available under the Freedom of Information Law.
- VIII. Miscellaneous:
- A. FOIL requests shall be directed to the department that possesses the documents. It is the responsibility of the person making the request to direct his/her request to the appropriate department.
  - B. Documents need not be created to satisfy a FOIL request.
  - C. Redactions. If the requested document contains some information that is exempted from disclosure (see Section V above), and some information that may be disclosed, the FOIL Officer should redact those portions of the document that are exempted and release the document.
  - D. Postage. Generally, FOIL Officers should not charge for postage. However, for large compilations of documents, the Officer should either:
    - 1. ask that the person making the request pick up the documents; or
    - 2. estimate the amount of the postage, add it to the cost of copying the documents and mail the documents.
  - E. Persons making FOIL requests shall be given the opportunity to inspect the documents (in their redacted form) and to select only some of the requested documents for copying.
- IX. Questions: Commissioners and FOIL Officers shall direct all questions regarding the Freedom of Information Law to the County Attorney.
- X. Attachments:
- A. Standard response to FOIL request (within 5 business days)
  - B. Response to FOIL request (within 5 days): More than 20 days needed to respond.
  - C. Response to FOIL request (within 5 business days): Denial
  - D. Notice that documents are available.